

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID ARP and  
TRIPLE DIAMOND ENTERPRISES, LLC

Defendants.  
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) Civil Action No. \_\_\_\_\_  
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**COMPLAINT**

The United States of America, through its undersigned attorneys, by the authority of the Attorney General, and at the request of the United States Army Corps of Engineers ("Corps"), alleges as follows:

**NATURE OF THE ACTION**

1. This is a civil action commenced under sections 309(b) and (d) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(b) and (d), to obtain injunctive relief and civil penalties against David Arp and Triple Diamond Enterprises, LLC ("Defendants"), for the discharge of dredged or fill material and/or for controlling and directing the discharge of dredged or fill material into waters of the United States at a single site located in Englewood, Charlotte County, Florida, consisting of approximately 13.47 acres of real property within Section 3, Township 42 South, Range 20 East, and Section 34, Township 41 South, Range 20 East, in Charlotte County, Florida (the "Site"), without authorization by the Corps, in violation of CWA sections 301(a) and 404, 33 U.S.C. §§ 1311(a) and 1344. The Defendants' conduct is also a violation of the Rivers and Harbors Act of 1899 ("RHA"), 33 U.S.C. § 401-418., and this is an action to enjoin the Defendants from maintaining structures and obstructions in navigable waters of the United

States.

2. In this action, the United States seeks (1) to enjoin the discharge of pollutants into waters of the United States without a permit issued by the Corps, and in violation of CWA §§ 301(a) and 404, 33 U.S.C. §§ 1311(a) and 1344; (2) to require Defendants, at their own expense and at the direction of the Corps, to restore and/or mitigate the damages caused by their unlawful activities; and (3) to require Defendants to pay civil penalties as provided in 33 U.S.C. § 1319(d).

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over the subject matter of this action pursuant to CWA § 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

4. Venue is proper in the Middle District of Florida pursuant to CWA § 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b) and (c), because the Defendants conduct business in this District, the Property is located in this District, and the causes of action alleged herein arose in this District.

5. Notice of the commencement of this action has been provided to the State of Florida pursuant to CWA § 309(b), 33 U.S.C. § 1319(b).

### **THE PARTIES**

6. The Plaintiff in this action is the United States of America. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516 and 519, and 33 U.S.C. § 1366.

7. Defendant David Arp is a private individual who was, at all times relevant herein, agent for Defendant Triple Diamond Enterprises, LLC, and who is residing at 6039 Manasota Key Road, Englewood, Florida, 34233.

8. Defendant Triple Diamond Enterprises, LLC is a limited liability company organized

under the laws of Florida with a business address of P.O. Box 1967, Nokomis, Florida 34275.

9. At all times relevant to the Complaint, one or more of the Defendants owned, leased, or otherwise controlled the Property that is the subject of this Complaint and/or otherwise controlled the activities that occurred on the Property.

#### **STATUTORY BACKGROUND**

10. CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with, *inter alia*, a permit issued pursuant to CWA § 404, 33 U.S.C. § 1344.

11. CWA § 404(a), 33 U.S.C. § 1344(a), authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits for the discharge of dredged or fill material into navigable waters at specified disposal sites, after notice and opportunity for public comment.

12. CWA § 502(12), 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source."

13. CWA § 502(6), 33 U.S.C. § 1362(6), defines "pollutant" to include, *inter alia*, dredged spoil, rock, sand, and cellar dirt.

14. CWA § 502(7), 33 U.S.C. § 1362(7), defines "navigable waters" as "the waters of the United States, including the territorial seas."

15. 33 C.F.R. § 328.3(a)(1), (2), (5) and (7), and 40 C.F.R. § 232.2, define "waters of the United States" to include: (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; (ii) all interstate waters; (iii) tributaries to such waters; and (iv) wetlands adjacent to such waters or their tributaries.

16. 33 C.F.R. § 328.3(b) and 40 C.F.R. §§ 122.2 and 232.2 define "wetlands" as "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of

vegetation typically adapted for life in saturated soil conditions."

17. CWA § 502(14), 33 U.S.C. § 1362(14), defines "point source" to include "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged."

18. CWA § 502(5), 33 U.S.C. § 1362(5), defines "person" to include "an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body."

19. CWA § 309(b), 33 U.S.C. § 1319(b), authorizes the commencement of a civil action for appropriate relief, including a permanent or temporary injunction, against any person who violates CWA § 301(a), 33 U.S.C. § 1311(a).

20. CWA § 309(d), 33 U.S.C. § 1319(d), authorizes the commencement of an action for civil penalties against any person who violates CWA § 301(a), 33 U.S.C. § 1311(a).

21. RHA § 10, 33 U.S.C. § 403, proscribes the construction of any structure which obstructs or alters the navigable capacity of any navigable water of the United States, unless affirmatively authorized by Congress or a permit issued by the United States Army Corps of Engineers.

#### **GENERAL ALLEGATIONS**

22. From September 2002 through March 2003, one or more of the Defendants and/or persons acting on their behalf, discharged dredged or fill material into waters of the United States without a permit under CWA § 404 at the Site.

23. The dredged or fill material that one or more of the Defendants and/or persons acting on their behalf, caused to be discharged includes, among other things, dirt, spoil, rock and sand, all of which constitute "pollutants" as defined in CWA § 502(6), 33 U.S.C. § 1362(6).

24. One or more of the Defendants and/or persons acting on their behalf used

mechanized land-clearing and earth-moving equipment to accomplish the discharges and alteration. This equipment constitutes "point sources" as defined in CWA § 502(14), 33 U.S.C. § 1362(14).

25. Defendants did not obtain a permit from the Secretary of the Army, acting through the Chief of Engineers, for the discharges of dredged or fill material into waters of the United States, as required by CWA §§ 301(a) and 404, 33 U.S.C. §§ 1311(a) and 1344.

26. One or more of the Defendants either owned, leased, or otherwise controlled the land on which each unauthorized discharge of dredged or fill material into waters of the United States occurred.

27. One or more of the Defendants conducted, contracted for, supervised and/or otherwise controlled the unauthorized activities at issue.

28. Defendants are persons within the meaning of CWA § 502(5), 33 U.S.C. § 1362(5).

29. Defendants have violated and continue to violate CWA § 301(a), 33 U.S.C. § 1311(a), by their unauthorized discharges of dredged or fill material into waters of the United States, including wetlands, at the Site. Each day that such material remains in place constitutes a separate violation of CWA § 301(a), 33 U.S.C. § 1311(a).

30. RHA § 10, 33 U.S.C. § 403, proscribes the construction of any structure which obstructs or alters the navigable capacity of any navigable water of the United States, unless affirmatively authorized by Congress or permitted by the United States Army Corps of Engineers.

31. The waters of the Site are subject to the ebb and flow of tide, and are "navigable water[s] of the United States" within the meaning of the RHA and the regulations promulgated thereunder.

32. Defendants' activities at the Site resulted in the unauthorized filling and construction of a structure that constitutes an obstruction to the navigable capacity of navigable waters of the United States.

33. Defendants have no permit under 33 U.S.C. § 403 or any applicable regulations for the erection of maintenance of the unauthorized structure.

#### **FIRST CLAIM FOR RELIEF**

##### **(Clean Water Act)**

34. Paragraphs 1-33 are incorporated herein by reference.

35. From September 2002 through March 2003, the Defendants and/or persons acting on their behalf or at their direction unlawfully discharged dredged or fill material into waters of the United States, within the meaning of the CWA and the regulations promulgated thereunder, and without the permit required by the CWA.

#### **SECOND CLAIM FOR RELIEF**

##### **(Rivers and Harbors Act)**

36. Paragraphs 1-35 are incorporated herein by reference.

37. Defendants' activities at the Site resulted in the unauthorized filling and construction of a structure that constitutes an obstruction to the navigable capacity of navigable waters of the United States.

38. Defendants have no permit under 33 U.S.C. § 403 or any applicable regulations for the erection of maintenance of the unauthorized structure.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff, the United States of America, respectfully requests that this Court execute the attached Consent Decree which provides as follows:

That the Defendants be permanently enjoined from discharging or causing the discharge of dredged or fill material or other pollutants into any waters of the United States except in compliance with the CWA; and

That the Defendants be permanently enjoined from maintaining structures and obstructions in navigable waters of the United States except in compliance with the Rivers and Harbors Act of 1899, 33 U.S.C. §§ 401-418; and

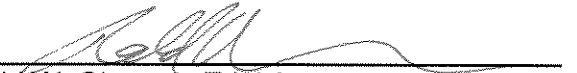
That the Defendants, or any combination thereof, be enjoined to undertake measures, at Defendants' own expense and at the direction of the Corps, to effect complete restoration of the Site and/or to conduct mitigation for irreversible environmental damage, as appropriate; and

That the Defendants be assessed an appropriate penalty pursuant to CWA § 309(d), 33 U.S.C. § 1319(d) for the violations.

Plaintiff further requests that this Court order each party to be responsible for their own costs of this litigation and of complying with the terms of the Consent Decree and that this Court grant Plaintiff, the United States of America, such other relief as the Court may deem just and proper.

Respectfully submitted,

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